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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 5823 of 2006

PETITIONER : Aditya Avnash Kaushik S/o Shri Avnash Sharma, aged about 23 years, Occupation-Student, studying in Final Year of MBBS course in CIMS, Bilaspur, permanent R/o Prachi Saingarh Road, Pathankot (Punjab), C/o Boys Hostel, Block No. 1, D/2, CIMS, Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1. Guru Ghasidas University, Through its Registrar, Bilaspur (C.G.)
2. Dean, Chhattisgarh Institute of Medical Science (CIMS), Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri Ashok Sharma Nabhewala, Advocate with Shri Rajiv Shrivastava, Advocate for the petitioner.
Shri Ashish Shrivastava, Advocate for the respondents.

ORDER
(Passed on ..16th..day of July, 2007)

1. The petitioner, by this petition seeks a writ in the nature of mandamus directing the respondents authorities to correct the mark-sheet of the petitioner of M.B.B.S Final Part-I (Supplementary) Examination, granting him 20 marks in internal assessment (Sessional) in the Community Medicine subject.

2. The petitioner was admitted to the M.B.B.S. course in the academic year 2001-2002. The petitioner successfully completed four years of M.B.B.S. course. The petitioner appeared in the M.B.B.S. Final Year Part-I examination held in July, 2005. The result was declared in November, 2005. The petitioner was shown to have secured 41 marks in the theory papers of the Community Medicine, 5 marks in oral test, 15 marks in practical test and 12 marks in internal assessment (Sessional) examination, in total 73 marks in

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the list (Annexure P/1). The petitioner was accordingly declared failed in the Community Medicine subject and he was permitted to appear in the supplementary examination in the said subject which was held on 16th Jan. 2006. The marks obtained by the petitioner in the Final Part-I (Supplementary) Examination in the internal assessment (Sessional) was notified as 20 marks in the subject of Community Medicine (Annexure P/3). In the statement of marks of Supplementary Examination of MBBS Final Part I (Annexure P/4) the marks obtained by the petitioner in the internal assessment (Sessional) was shown as 15 instead of 20, as notified earlier.

3. The petitioner, because of the reduction of marks in Sessional i.e. internal assessment, was declared as failed. The minimum passing marks in the Community Medicine subject is 100 i.e. 50% of the maximum marks i.e. 200. After adding 15 marks in internal assessment (Sessional) in the Community Medicine, the petitioner secured 98 marks in the subject and was declared failed. Had the petitioner been given the total marks obtained in internal assessment (Sessional) i.e. 20, the petitioner would have secured 103 and ought to have been declared as passed. Consequently, the petitioner was not allowed to appear in the MBBS Final Part-II Examination held in the month of July, 2006. Thus, the petitioner suffered loss of six months on account of mistake committed by the respondent authorities. However, by order dated 31.10.2006 passed by this Court, the petitioner was permitted to appear in MBBS Part-II (Supplementary) examination conducted by the respondents.

4. Shri Ashok Sharma Nabhewala, learned counsel with Shri Rajiv Shrivastava, learned counsel for the petitioner, would submit that the petitioner had obtained 20 marks in the internal assessment (Sessional) in the supplementary examination. The petitioner has wrongly been denied the

benefit of 20 marks on the ground that the petitioner had obtained 15 marks earlier and that was final. The marks obtained in supplementary examination was due to mistake. Learned counsel further submits that in the subsequent examination wherein the petitioner was permitted by the authorities to appear, was not on the basis of any mis-representation made by the petitioner, and the petitioner was properly assessed and awarded 20 marks. The denial of the said marks is prejudicial to the interest of the petitioner. The action of the respondents is arbitrary, unreasonable and discriminatory. Thus, learned counsel seeks for the relief for declaring the result after adding 20 marks instead of 15 marks in internal assessment (Sessional) in the Community Medicine subject.

5. Shri Ashish Shrivastava, learned counsel appearing for the respondents, per contra, would submit that in the supplementary examination, the candidate is allowed to appear only in those subjects where he had failed. The petitioner had obtained 15 marks in the internal assessment (Sessional) of the Community Medicine subject. Thus, the petitioner wrongly appeared in the internal assessment and the petitioner could not have been granted the marks obtained in supplementary examination in internal assessment which he had already obtained qualifying marks earlier. Learned counsel relied upon clause 7 of Medical Council of India's Regulation which reads as under:

> "(7) Supplementary examination may be conducted within 6 months so that the students who pass can join the main batch and the failed students will have to appear in the subsequent year."

6. Learned counsel appearing for the respondents rely on certain clauses of ordinance No. 109 of Pt. Ravishankar Shukla University, Raipur regarding examination which, according to the learned counsel, has been adapted by the respondent-University indicating that if the candidate has obtained at least

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35% marks of total marks for internal assessment in a particular subject, he is not permitted to appear in the subject again in supplementary examination, which is as under:

"5. EXAMINATION REGULATIONS

(2) INTERNAL ASSESSMENT

(i) It shall be based on day to day assessment evaluation of student assignment, preparation for seminar, clinical case presentation etc.

(ii) Regular periodical examinations shall be conducted through out the course. The question of number of examination is left to the institution.

(iii) Day to day records should be given importance during internal assessment.

(iv) Weightage for the internal assessment shall be 20% of the total marks in each subject.

(v) Student must secure at least 35% of the total marks fixed for internal assessment in a particular subject in order to be eligible to appear in final university examination of that subject"

(3) UNIVERSITY EXAMINATION:

(i) xxx xxx xxx xxx xxx

(ii) Students must secure at least 35% marks of total marks fixed for internal assessment in particular subject in order to be eligible to appear in final University examination.

(iii) xxx xxx xxx xxx xxx

(iv) A candidate who has passed in any subject of a professional examination need not appear in that subject in any subsequent examination."

7. Accordingly, the petitioner has obtained more than 35% marks in the internal assessment of Community Medicine subject in the main examination. He had wrongly appeared in the supplementary examination. Thus, awarding 20 marks which is not in dispute, cannot be taken into consideration in the final mark sheet.

8. I have heard the learned counsel for the parties, perused the pleadings and papers appended thereto.

9. In the case on hand, the petitioner was permitted by the Head of the Department of Community Medicine, Chhattisgarh Institute of Medical

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Science, Bilaspur (hereinafter referred to as "CIMS") to appear in the supplementary examination and admittedly, as per notice, he secured 20 marks out of total 40 in internal assessment (Sessional). In the final mark list, only 15 marks were added in the statement of marks (Annexure P/4). Accordingly, he secured 98 marks. The minimum qualifying marks for declaring a candidate as passed was 100 out of 200 maximum marks, being 50% of the maximum marks. The subsequent internal assessment was completely ignored by the respondents. Had it been added to the marks obtained under other heads of the examination, the petitioner ought to have secured 103 and would have been declared as passed.

10. Be that as it may, if a student deserves more marks, he should not be declined the benefit of more marks on technical ground that by mistake he was permitted to appear in the supplementary examination and he was not required to appear in the examination. The relevant provision of Pt. Ravishankar Shukla University, Raipur, which according to the learned counsel for the petitioner has been adapted by the respondent University, also does not debar in clear terms appearance in the supplementary examination. Sub-clause 4 of Clause 3 of the said ordinance provides that a candidate who has passed in any subject of a professional examination need not appear in that subject again in any subsequent examination. Here, the word "need not" does not debar the candidate completely from appearing in the examination when the authorities including the Head of the Department has permitted the petitioner, to appear in the examination. Admittedly the petitioner has obtained 20 marks out of 40 in the internal assessment (Sessional scores). After adding 20 instead of 15 in the total marks obtained, the petitioner is

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declared as passed in Community Medicine subject and consequently in MBBS Final Part-I examination.

11. Looking from all angles, denial of 20 marks to the petitioner in internal assessment in the Community Medicine subject in M.B.B.S Final Part-I examination would amount to taking hyper-technical view and that should not come in the way of interest of justice. Thus, the petitioner is entitled to 20 marks in the internal assessment in the said subject and the petitioner be declared as passed in M.B.B.S Part-I Final examination.

12. In view of the foregoing, the petitioner was entitled to appear in the MBBS Final Part-II examination held in July 2006, but he was not permitted to appear. However, by virtue of the order dated 31.10.2006 passed by this Court, the petitioner was allowed to appear in Final Part-II (Supplementary) examination and the same was subject to final decision of this case. The respondents are accordingly directed to declare the result of M.B.B.S Final Part-II (Supplementary) Examination of the petitioner with other consequential benefits as permissible under law.

13. As a result, this petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit